

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

ELIZABETH GOODWIN, etc.,)
)
Plaintiff,)
)
v.) Case No. 1:15-CV-0027
) Judge Donald C. Nugent
CITY OF CLEVELAND, et al.,)
)
Defendants.)

- - -

THE DEPOSITION OF SGT. JENNIFER KEMER
THURSDAY, APRIL 21, 2016

- - -

The deposition of SGT. JENNIFER KEMER, a witness,
called for examination by the Plaintiff, under the
Federal Rules of Civil Procedure, taken before me,
Kristine M. Esber, a Notary Public in and for the State
of Ohio, pursuant to Notice, at Cleveland City Hall,
Department of Law, 601 Lakeside Avenue, Cleveland,
Ohio, commencing at 9:08 a.m., the day and date above
set forth.

- - -

HOFFMASTER & BARBERIC, INC.
THE GRAY'S BLOCK, SUITE 440
1360 WEST NINTH STREET
CLEVELAND, OH 44113
(216) 621-2550
FAX (216) 621-3377
1-888-595-1970

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 ALPHONSE A. GERHARDSTEIN, ESQ.
4 Gerhardstein & Branch Co., LPA
432 Walnut Street, Suite 400
Cincinnati, Ohio 45202
(513) 621-9100

6 DAVID B. MALIK, ESQ.
7 SARA GEDEON, ESQ.
The Law Office of David B. Malik
8 8437 Mayfield Road, Suite 101
Chesterland, Ohio 44026
(440) 729-8260

10 On behalf of the Defendant City of Cleveland:

11 SUSAN BUNGARD, ESQ.
12 Assistant Law Director
Department of Law
13 601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2310

15 On behalf of the Defendants Scott Aldridge and Bryan
16 Myers:

17 JOHN P. BACEVICE, JR., ESQ.
18 Assistant Law Director
Department of Law
19 601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(216) 664-2807

21 - - -
22
23
24
25

Page 3

	INDEX	PAGES
1		
2		
3	CROSS-EXAMINATION BY	
4	MR. GERHARDSTEIN	4
5		
6	- - -	
7		
8	PLAINTIFF'S EXHIBITS MARKED	
9	41	20
10		
11	- - -	
12		
13	OBJECTIONS BY	
14	MR. BACEVICE	8, 10, 12(2), 13(2), 14(3), 15(2), 16, 19(4), 20, 21(2), 22(2), 24(2), 25(3), 26(2), 27, 28(3), 29, 33, 34(2), 35(3), 36(4), 37(3), 38, 42(3), 43, 44(2), 45(4), 46(2), 47, 48(2), 49(3), 50, 51(2), 52(2), 53(2), 56(2), 57, 58(2), 59
15		
16		
17		
18	MS. BUNGARD	8, 10, 13, 14, 15(2), 19(3), 20, 21(2), 22, 24(2), 25(3), 26(2), 27, 28(2), 29, 33, 34(2), 35(3), 36(4), 37(3), 39(2), 40(3), 42(3), 43, 44(2), 45(4), 46, 47(3), 48(2), 49(3), 50, 51(2), 52, 53(2), 56(3), 57, 58, 59
19		
20		
21		
22	- - -	
23		
24		
25		

1 SGT. JENNIFER KEMER

2 a witness, called for examination by the Plaintiff,
3 under the Rules, having been first duly sworn, as
4 hereinafter certified, deposed and said as follows:

5 CROSS-EXAMINATION

6 BY MR. GERHARDSTEIN:

7 Q. Good morning.

8 A. **Good morning.**

9 Q. State your name, please.

10 A. **Jennifer Kemer.**

11 Q. And what's your highest level of education?

12 A. **Bachelor's Degree.**

13 Q. And Kemer is with one M?

14 A. **Correct.**

15 Q. Where did you get the Bachelor's Degree?

16 A. **Cleveland State University.**

17 Q. When?

18 A. **1997.**

19 Q. And who do you work for?

20 A. **City of Cleveland Police Department.**

21 Q. When did you get hired?

22 A. **March of 1997.**

23 Q. Did you have any full-time jobs before working
24 for the City of Cleveland?

25 A. **Yes.**

1 Q. What did you do?

2 A. I worked for the Cleveland Public Library. I
3 worked for Big Met golf course.

4 Q. Are you a golfer?

5 A. Not as much anymore.

6 Q. So start in March of '97 and just tell me your
7 career path here in Cleveland.

8 A. Okay. About four and a half months in the
9 police academy. After that I was assigned to the First
10 District. I spent about six years at the First
11 District.

12 Then I got into a unit called the cops and
13 schools unit. I was in that for about six years. In
14 between I may have went back to the district on the
15 road for about six months.

16 Then I went to the police academy in '09. I was
17 there for about five years. Was promoted in 2014 and
18 I've done that for two years.

19 Q. When were you promoted in 2014?

20 A. March, March 25th I believe.

21 Q. And that was to sergeant?

22 A. Correct.

23 Q. And then where did you go from there?

24 A. I went to the Fifth District.

25 Q. As a sergeant?

1 A. **Correct.**

2 Q. And now as of when are you back at training?

3 A. **June of 2015 I am the OIC of the gymnasium unit.**

4 Q. And what's that mean, the OIC of the gymnasium
5 unit?

6 A. **So there's a sergeant in charge. We're one**
7 **branch of the training section. So you have the gym,**
8 **the range and the academy.**

9 Q. Okay.

10 A. **So I oversee the instructors in the gym.**

11 Q. And what are they teaching?

12 A. **They teach subject control, physical**
13 **conditioning, handcuffing, ASP baton, taser, pepper**
14 **spray, all your immediate weapons.**

15 Q. And you taught all of those at some point?

16 A. **I am certified in some of those, but I haven't**
17 **actually taught them.**

18 Q. Which ones have you taught?

19 A. **With the Cleveland Police Academy, I actually**
20 **was only a substitute when I was a patrolman on the**
21 **subject control. So it was on occasion if an**
22 **instructor wasn't there, like if they were short an**
23 **instructor. So I never taught it as a full-time**
24 **position.**

25 Q. Who else have you taught for?

1 **A.** **Tri-C, Cuyahoga Community College.**

2 **Q.** And what do you teach for them?

3 **A.** **various topics. Community diversity, crisis**
4 **intervention, subject control, physical conditioning.**

5 **I think there's probably another classroom topic or**
6 **two, I just don't recall. It's been a few years.**

7 **Q.** So you supervised officers who teach all of the
8 subjects you listed under the gym?

9 **A.** **Correct.**

10 **Q.** So you need to know whether they're doing a good
11 job?

12 **A.** **Sure.**

13 **Q.** And so you do need to know how to teach those
14 things, right?

15 **A.** **Sure.**

16 **Q.** Because you evaluate people who teach those
17 things?

18 **A.** **M-hm.**

19 **Q.** Did you have any personal involvement with the
20 Tanisha Anderson investigation at all?

21 **A.** **No.**

22 **Q.** Did you have any personal involvement with any
23 review of the conduct of the officers who were engaged
24 with Tanisha Anderson on November 12th, 2014?

25 **A.** **No.**

1 Q. Any personal involvement with any after-action
2 review that may have been done regarding the death of
3 Tanisha Anderson?

4 **A. No.**

5 Q. Are you aware of any after-action review that
6 may have been done regarding the death of Tanisha
7 Anderson?

8 MR. BACEVICE: Objection.

9 **A. No.**

10 MS. BUNGARD: Objection.

11 BY MR. GERHARDSTEIN:

12 Q. As a person involved in training, can you tell
13 me how training topics have been developed over the
14 years, like what do you choose to do in-services on;
15 were you involved in that?

16 **A. I was years ago. It's usually a state mandate
17 of what topics are to be covered.**

18 Q. For in-services?

19 **A. M-hm.**

20 Q. Was there any discretion within the Cleveland
21 Division of Police to pick topics for in-services, or
22 was it all just whatever the state said?

23 **A. That wouldn't have been anything -- information
24 I would know about.**

25 Q. Okay. Did you ever participate in any committee

1 that made decisions about in-service topics?

2 **A. Not that I recall.**

3 Q. Did you ever participate in any committee that
4 reviewed policies in light of experiences that officers
5 were having in the field?

6 **A. Not that I recall.**

7 Q. Did you ever write any policies?

8 **A. No.**

9 Q. Did you ever determine or help determine whether
10 Cleveland policies were actually working?

11 **A. No.**

12 Q. Did you ever offer any suggestions for changes
13 or alterations in general orders or training -- well,
14 we'll say general orders first?

15 **A. Offer any suggestions for changes?**

16 Q. Yeah.

17 **A. Not that I recall.**

18 Q. You have taught subject control and you've
19 supervised people who teach subject control, right?

20 **A. I've taught subject control very minimally. I
21 was certified and was a fill-in at Cuyahoga Community
22 College.**

23 **At the Cleveland Police Academy in the gym, it
24 was a very rare occasion. Like I said, if they were
25 short an officer, an instructor.**

When I got to the academy last year in June they were already at the point where the instruction was completed, so I've not supervised it.

Q. But that's part of your job description, right?

A. Sure.

Q. So when it comes up you will be supervising it?

A. Yes.

Q. And when's the next subject control course?

A. If we have a police academy, which we may never again. Our current police academy is down at the highway patrol, so all their instruction occurred there.

Q. Yeah. Why is that?

14 MR. BACEVICE: Objection.

15 MS. BUNNARD: Objection.

16 THE WITNESS: Very good?

BY MR. GERHARDSTEIN:

Q. You can answer.

19 MS. BUNGARD: If you

know, you can answer.

Q. It isn't that easy.

A. My understanding is that we are tasked with a lot of other training in the RNC; therefore, we really wouldn't have the personnel to do both. It's not because we're horrible at what we do.

1 Q. Would you agree when an officer is trained in
2 handcuffing that the general technique is to cuff the
3 subject behind his or her back?

4 A. **Yes.**

5 Q. And in your experience in Cleveland the cuffing
6 is taught where the subject is standing, kneeling and
7 in a prone position, right?

8 A. **Yes, all three types.**

9 Q. And an officer, depending on the circumstances,
10 may order a person to a prone position in order to
11 facilitate cuffing, right?

12 A. **Correct.**

13 Q. And a person may end up in the prone position as
14 a result of tasing or other intermediate force, right?

15 A. **Sure.**

16 Q. Okay. So it's foreseeable that a Cleveland
17 police officer will be cuffing persons behind their
18 back who are prone on the ground, right?

19 A. **Has it happened? Yes, with any police officer.**

20 Q. And is it likely to happen?

21 A. **Sure, depending on the situation.**

22 Q. Right. And an officer in the field could expect
23 to encounter this opportunity to cuff people who are
24 prone and cuff behind their back, right?

25 A. **Yes.**

Page 12

1 Q. So what instructions in your experience have
2 officers been given about how to cuff a subject behind
3 his or her back who's prone when they're being cuffed?

4 MR. BACEVICE: Objection.

5 BY MR. GERHARDSTEIN:

6 Q. What do you say?

7 MS. BUNGARD: You can
8 answer.

9 A. **You're taught like verbiage to use, --**

10 Q. Okay.

11 A. **-- to get the person in the prone position,**
12 **which is having the person get on the ground, putting**
13 **their arms out, palms up. Then you'll tell them to**
14 **interlace their fingers behind their back. And**
15 **that's -- then you move in and handcuff the individual.**

16 Q. And where does the officer stand or position him
17 or herself when the subject has placed their hands
18 behind their back and the subject's in the prone
19 position?

20 MR. BACEVICE: Objection.

21 A. **I mean, I can't say. It's on the individual**
22 **officer.**

23 Q. It doesn't matter?

24 A. **Correct. I mean, yeah, I really can't say.**

25 Q. And after the person is cuffed behind his or her

Page 13

1 back and is still in the prone position, what's the
2 officer supposed to do next?

3 MR. BACEVICE: Objection.

4 MS. BUNGARD: Objection.

5 BY MR. GERHARDSTEIN:

6 Q. You can answer.

7 A. **There's -- I mean, there's many things.**

8 Q. Well, --

9 A. **It depends on the situation.**

10 Q. Okay. Let's just assume that the situation is
11 stable. All right? You are not dodging bullets or
12 there's other threats around, you know. They've
13 secured the person. What's the next thing that's
14 supposed to happen --

15 MR. BACEVICE: Objection.

16 Q. -- with respect to the subject?

17 A. **Once the scene is safe?**

18 Q. Yeah.

19 A. **When you're able, you'll get the person up off**
20 **the ground.**

21 Q. And how is that done?

22 A. **There's various ways.**

23 Q. Can you just pull on their arms?

24 A. **You don't just pull on their arms. You will**
25 **assist them by their arms to get them up.**

Page 14

1 Q. Is there any caution given to officers about any
2 dangers connected with having people cuffed behind
3 their back and prone on the ground?

4 MR. BACEVICE: Objection.

5 A. I'm not sure what you're asking.

6 Q. Are there any health hazards to those people?

7 MR. BACEVICE: Objection.

8 A. To the person?

9 Q. Yeah.

10 A. I mean, sure. Any individual, once they were
11 taken down to the ground, handcuffed, and then you're
12 assisting them up, depending on size and things like
13 that, sure, there could be harm when a person goes to
14 the ground.

15 Q. How about while they're on the ground and cuffed
16 behind their back, is there any health hazard from
17 being in that position?

18 MR. BACEVICE: Objection.

19 MS. BUNGARD: Objection.

20 You can answer.

21 A. Yeah, there could be a health hazard.

22 Q. Tell me about that.

23 A. So policemen are taught when able, when the
24 scene is safe to -- at a minimum try to roll the person
25 on their side. And then when you're able to, pick them

Page 15

1 up, put them in the zone car, the ambulance, wherever
2 they may be going.

3 Q. So why are they told to roll the person on the
4 side?

5 MR. BACEVICE: Objection.

6 MS. BUNGARD: Objection.

7 Go ahead.

8 A. When a person is laying on their chest, the
9 chest has a hard time falling and rising, so it can
10 cause a person not to have oxygen or blood pumping. So
11 that's why after we know that it's safe for the
12 officers, then we will at a minimum roll the person
13 over.

14 Q. Is there any written material provided to
15 officers that describes this challenge in having your
16 chest rise and fall and the possibility of problems
17 with breathing while you're prone on the ground?

18 MR. BACEVICE: Objection.

19 MS. BUNGARD: Objection.

20 You can answer.

21 A. Not specifically that. I know in one of our
22 policies it says no hog-tying. And then in crisis
23 intervention it talks about excited delirium, which is
24 a multitude of factors and symptoms going on. So that
25 might just exacerbate.

1 So when they're being taught about a possible
2 excited delirium case, you're taught about the chest
3 falling and rising and things like that. So that's why
4 we teach our recruits to at least roll them to their
5 side, and then get them up as soon as you're able to.

6 Q. From the time you came in in -- what year was
7 it?

8 A. To the police academy?

9 O. Yeah.

10 | A. 2009.

11 Q. -- 2009 to 2014 was everybody taught about
12 excited delirium?

13 A. Who's everybody?

14 Q. Everybody that went through in-services and
15 everybody that went through the academy.

16 A. I don't know.

17 Q. So what about just straight up subject control
18 classes on handcuffing, are those officers who are
19 involved in a handcuffing class taught about the
20 possible breathing problems that come from being prone?

21 MR. BACEVICE: Objection.

22 A. And I've never taught handcuffing in Cleveland,
23 so I'm really not sure.

24 O. As you -- do you have the curriculum?

25 A. Yes. The subject control curriculum. Yes.

1 Q. And have you seen the curriculum?

2 A. It's been a while, but I have seen it. Yes.

3 Q. Do you know whether the curriculum includes
4 cautions about breathing trouble?

5 A. I don't believe so, but I would have to look at
6 it to make sure.

7 Q. So it would be up to the instructor to explain
8 why they're suggesting that officers roll people over?

9 A. Correct.

10 Q. Have you ever taken a class where positional
11 asphyxiation is explained?

12 A. I just went to a class last -- about a week and
13 a half ago.

14 Q. Was that the first one you went to where
15 positional --

16 A. As I recall, yes. I believe that's the first
17 class I ever went to on that topic. Excited delirium
18 was the topic, but that comes up specifically.

19 Q. And where was that class?

20 A. That was at Marymount Hospital.

21 Q. What network is that part of?

22 A. I'm sorry?

23 Q. Is that a --

24 A. It's Cleveland Clinic now.

25 Q. How long was that class?

1 A. An hour and a half.

2 Q. And what was included in the materials regarding
3 positional asphyxiation?

4 A. It was dual-fold. There was the commander from
5 the police department there and then a professor from
6 Ohio State University. So he did a small section on
7 the excited delirium. I can never remember what the
8 topic was. It was more like for the medical personnel
9 in the room.

10 Q. Who was the commander?

11 A. I don't know. He's commander of Cleveland
12 Clinic Police.

13 Q. And what did he say about positional
14 asphyxiation?

15 A. Well, he actually talked about excited delirium,
16 and just explained how it's still kind of a phenomenon
17 where doctors can't just say these five things, that
18 means it's excited delirium. But within there he
19 talked about adding to the person's heart rate being
20 elevated, their body temperature, possibly under the
21 influence of drugs or alcohol, and then being in a
22 prone position, that that could cause troubles
23 breathing and things like that.

24 So again, he talked about understanding law
25 enforcement safety is utmost, and then when able, being

able to get the person up from that prone position.

2 Q. Prior to November 12th, 2014 did you have any
3 other training on positional asphyxiation?

4 A. I don't believe so.

5 MR. BACEVICE: Objection.

6 A. I don't recall.

7 Q. Prior to November 12th, 2014 in your experience
8 were recruits told about the physical challenge posed
9 to subjects who are prone on the ground and trying to
10 breathe while they're cuffed behind their back?

11 MR. BACEVICE: Objection.

12 MS. BUNGARD: Objection.

13 A. I'm not sure.

14 Q. Prior to November 12th, 2014 did the City of
15 Cleveland ever provide officers or trainers with any
16 written materials that specifically describe the
17 dangers of positional asphyxiation?

18 MS. BUNGARD: Objection.

19 MR. BACEVICE: Objection.

20 A. I don't know.

21 Q. Prior to November 12th, 2014 did you ever see
22 any specific written materials that describe the
23 dangers of positional asphyxiation?

24 MS. BUNNARD: objection.

25 MR. BACEVICE: Objection.

1 | A. I honestly don't recall.

(Thereupon, Plaintiff's Exhibit 41 to
the deposition of SGT. JENNIFER KEMER was
marked for identification.)

MR. BACEVICE: Is that
41?

Note an objection to Exhibit 41.

And, Al, can I have a standing
objection to the questions based off of
41?

MR. GERHARDSTEIN: Okay.

MR. BACEVICE: Thank you.

MS. BUNGARD: I object,
also.

15 BY MR. GERHARDSTEIN:

16 Q. I'm showing you what has been marked as
17 Exhibit 41.

18 | A. Okay.

19 Q. This is a brochure that was produced in June of
20 1995 about positional asphyxiation and distributed by
21 the Justice Department. Have you ever seen this
22 before?

A. I don't believe so.

24 Q. How about in TV, movies, news, prior to November
25 12th. 2014 did you ever see positional asphyxiation

Page 21

1 featured in those sources?

2 MR. BACEVICE: Objection.

3 MS. BUNGARD: Objection.

4 A. **Possibly in the media. I honestly don't know.**

5 Q. So as of November 12th, 2014 what would you
6 expect a Cleveland Police Officer who's been to the
7 training academy and been through the recruit class,
8 what would you expect that officer to know, if
9 anything, about positional asphyxiation?

10 MR. BACEVICE: Objection.

11 MS. BUNGARD: Objection.

12 You can answer.

13 A. **Just that, you know, they're taught the safety**
14 **of the scene, not just themselves or the public, is of**
15 **first concern. And then once it's safe, if they have**
16 **somebody in any type of position, whether it's**
17 **standing, kneeling or prone handcuffed, that again as**
18 **soon as they're able to at a minimum roll that person**
19 **over, and then obviously when able, pick them up.**

20 Q. Was that term used?

21 A. **Not really. It really isn't.**

22 Q. So would it be more fair to say that they were
23 told to get the person up, but there wasn't a lot of
24 exploration as to why?

25 A. **Sure. I would say yes.**

Page 22

1 Q. When officers were going through the subject
2 control training, would they be graded?

3 A. **There's certain things they're graded on. Yes.**

4 Q. Is that a pass fail, or graded in another way?

5 A. **I believe it's all pass fail.**

6 Q. So if an officer failed to promptly in a
7 scenario get a subject off the ground who was prone and
8 cuffed behind his or her back, would they flunk the
9 subject control?

10 MR. BACEVICE: Objection.

11 A. **No. I don't even think that's -- there's a list**
12 **of what specific techniques they're graded on. If an**
13 **officer feels that they're deficient in it, they would**
14 **train them until they're able to do it. They're**
15 **trained in techniques.**

16 Q. And on that list is there a place to assess how
17 promptly a person who is prone and cuffed behind their
18 back is either rolled over or moved up off the ground?

19 MR. BACEVICE: Objection.

20 MS. BUNGARD: Objection.

21 A. **No.**

22 Q. What's that list called?

23 A. **I would have to look at the curriculum. I don't**
24 **know.**

25 Q. But if I were to look at a training file on a

1 person who's been through a subject control class,
2 would I find a checklist and then an indication that
3 that person had mastered the techniques and items
4 listed on the checklist?

5 **A. Yes. It's like a skills checklist.**

6 Q. Okay.

7 A. I don't know if that's exact verbiage. And
8 that's a form that's from the state. So I don't know
9 that we have it, but it is there.

10 Q. So are the training records that you have owned
11 by the Attorney General's office?

12 A. I have no clue.

13 Q. Do you keep a copy of all the training, related
14 records for each officer, or do they go to the state?

15 A. I do not. I am not in charge of that, so I am
16 not sure if it's kept at the training section or at the
17 state.

18 Q. You mentioned that hog-tying is prohibited.
19 What is that; what is hog-tying?

20 A. Hog-tying is essentially putting somebody in the
21 prone position, legs up and hands together. There's
22 different terms for it. There's like a new term out
23 they kept using at this training I never heard.

24 Q. Legs up and hands together behind their back, or
25 hands connected to the legs?

1 **A. Hog-tying is considered hands connected to the
2 legs.**

3 Q. What's the problem with it?

4 **A. Just a person being on their chest and that
5 chance of not being able to let the chest fall and
6 rise.**

7 Q. In your training have you ever been told how
8 long a person -- how soon a person could have
9 respiratory distress if they're on their chest and
10 cuffed behind their back?

11 MR. BACEVICE: Objection.

12 MS. BUNGARD: Objection.

13 BY MR. GERHARDSTEIN:

14 Q. Like what's the timing involved in this?

15 MS. BUNGARD: You can
16 answer.

17 **A. No. I mean, I never been told there's an amount
18 of time.**

19 Q. As you sit here today with whatever training you
20 got up through today, do you know whether there's some
21 amount of time when it becomes more dangerous to have a
22 person prone and cuffed behind their back?

23 MR. BACEVICE: Objection.

24 MS. BUNGARD: Objection.

25 **A. No, no. I don't believe anybody's ever said a**

1 time frame.

2 Q. So what do you consider to be the time frame you
3 should work within in order to comply with the
4 instruction you give subjects about rolling them over
5 or getting them up?

6 MR. BACEVICE: Objection.

7 MS. BUNGARD: objection.

8 A. There isn't one. I don't believe there is one.

9 Q. Given your understanding of positional
10 asphyxiation, are obese people more at risk of that
11 problem than people who are not obese?

12 MR. BACEVICE: Objection.

13 MS. BUNGARD: Objection.

14 A. I don't know.

15 Q. Given your understanding of positional
16 asphyxiation, are people who have pressure put on their
17 back when they're prone more at risk of positional
18 asphyxiation than those who simply are positioned prone
19 without pressure on their back?

20 MR. BACEVICE: Objection.

21 MS. BUNNARD: Objection.

22 A. I really don't know.

23 Q. In the subject control classes you've observed
24 and taught and will now supervise are there any
25 cautions given to trainees about obese people being at

Page 26

1 risk for positional asphyxiation when they are prone
2 and cuffed behind their back?

3 MS. BUNGARD: Objection.

4 MR. BACEVICE: Objection.

5 **A. I don't know of that being part of the training.**

6 Q. And again, in these subject control classes that
7 you've taken, have taught and will now supervise are
8 there any cautions given to trainees about placing
9 pressure on the back of the subject who is prone and
10 cuffed behind their back?

11 MR. BACEVICE: Objection.

12 MS. BUNGARD: Objection.

13 Go ahead.

14 **A. Just again, they're taught obviously any time**
15 **you would put pressure on somebody, there's obviously a**
16 **chance to cause a problem. But it's the safety of the**
17 **situation, and then getting the person up when you're**
18 **able.**

19 **But depending what the person is doing, there's**
20 **times you may have to do that in order to affect what**
21 **you're trying to do.**

22 Q. So you would expect a Cleveland Police Officer
23 to know that there is a risk posed to the breathing of
24 a subject who is prone on the ground and cuffed behind
25 their back when pressure is put on that subject's back,

Page 27

1 and that should be part of the calculus as to what
2 amount of force to use given other considerations at
3 the time; --

4 MR. BACEVICE: Objection.

5 MS. BUNGARD: Objection.

6 BY MR. GERHARDSTEIN:

7 Q. -- is that fair?

8 A. I would say you just talked in a circle.

9 Honestly I'm not sure what you're asking.

10 Q. I'm asking you, every officer has to only use
11 reasonable force, right?

12 A. Every officer is expected to use objectively
13 reasonable force, correct.

14 Q. Right. And the calculation for that includes
15 the risk of harm to the subject is one thing, right?

16 A. I don't know that it's calculation. It's not a
17 formula. It's based on the situation at hand.

18 Q. Right. And it's not mathematical, but you have
19 to look at certain factors.

20 A. Sure.

21 Q. Seriousness of the crime, right?

22 A. Yes.

23 Q. And whether there's a threat posed to the
24 officer or member of the public, right?

25 A. Correct.

Page 28

1 Q. And whether the person is fleeing?

2 A. **Right. That's the objective.**

3 Q. And you would also in a situation where you're
4 on a mental health run want to keep in mind whether
5 there's any crime at all, right?

6 A. **Yes.**

7 MR. BACEVICE: Objection.

8 BY MR. GERHARDSTEIN:

9 Q. Because people who you're helping go to the
10 hospital are not even under your control due to a
11 public safety problem in many instances, right?

12 MR. BACEVICE: Objection.

13 MS. BUNGARD: Objection.

14 A. **Again, I'm not sure what you're asking.**

15 Q. Well, I'm trying to get an agreement on what are
16 the factors that you want to look at when you're
17 evaluating the force an officer uses. Okay?

18 So if you've got a person cuffed on the ground
19 and prone, you'd want to know what that person did,
20 right, the seriousness of whatever the conduct was that
21 led that person to be cuffed by you, right?

22 MR. BACEVICE: Objection.

23 MS. BUNGARD: Objection.

24 THE WITNESS: Can I
25 answer?

1 MS. BUNGARD: Yeah.
2 A. Not necessarily. It's still what are the
3 actions of that individual, whether they committed a
4 crime or not.

5 Q. Right.

6 A. If they're still --

7 Q. Okay.

8 A. -- of a safety factor to everybody involved.

9 Q. So you want to know that, whether they committed
10 a crime or not, right, is one of the things you just
11 said?

12 A. Well, yes.

13 Q. Okay. And you'd also want to know whether or
14 not they are posing a threat?

15 A. Correct.

16 Q. And you'd also want to know whether the force
17 you're going to use is likely to injure them, and
18 balance that against these other factors, right?

19 MR. BACEVICE: Objection.

20 MS. BUNGARD: Objection.

21 BY MR. GERHARDSTEIN:

22 Q. Is part of your objective reasonableness?

23 A. I take -- an officer, yes, is supposed to use
24 that standard objectively reasonable when they're going
25 to use force, correct, and they take factors into

1 consideration.

2 Every situation is different, so I can't say --
3 just in a scenario every situation is different. But
4 yes, you are obligated to use an objective reasonable
5 standard when you determine force.

6 Q. Have you ever been asked to review the
7 reasonableness of force by persons who -- by officers
8 who were cuffing people in the field?

9 A. I don't believe so.

10 Q. So you've been a supervisor in the field, right?

11 A. Yes.

12 Q. And on all the tours of duty that you've had
13 have any of the officers under your command used force?

14 A. Yes.

15 Q. And have you had to make a determination at an
16 initial level whether those officers used reasonable
17 force?

18 MS. BUNGARD: Yeah, you
19 can answer.

20 A. I think I had two use of force investigations as
21 a supervisor on the street.

22 Q. And while you were in training were you ever
23 instructed to retrain people by supervisors who said
24 this person ought to be retrained on this or that
25 technique because of concerns about their proficiency

1 A. I was not, no.

2 Q. Have you ever been involved in any sort of
3 review of use of force by another officer other than
4 those two instances that you just described?

5 THE WITNESS: Am I good?

6 MS. BUNGARD: Yeah.

7 A. I think, again, since I went down to the gym,
8 there were maybe two cases where my guys delivered
9 reinstruction for a -- for an officer, but I was not
10 personally involved in that.

11 Q. But you supervised your instructors doing
12 reinstruction to those officers?

13 A. Yes.

14 | Q. And tell me about those cases.

15 A. One was I believe a -- it started as a report
16 writing incident. So I think it came down to the gym
17 and ended up going back to the academy.

18 And the other one was -- I'd have to look at the
19 report. It was two officers involved in a burglary
20 incident and a foot pursuit ensued, and then
21 reinstruction was on some type of subject control,
22 taking control of the individual.

23 Like I said, I wasn't involved in the
24 instruction, so I can't tell you exactly what the
25 incident was.

1 Q. How did the report writing incident relate to
2 subject control?

3 A. It wasn't subject control. That's why they
4 thought maybe it was gym issue, and then they realized
5 it was more of an academy issue.

6 I think that was the only two cases that I can
7 recall that came across my desk, per se.

8 Q. And then you had a couple of instances out in
9 the field. Tell me about those, where you were
10 assessing the reasonable of force that people use.

11 A. I had a set of officers who tased an individual,
12 and it was my job to do the investigation afterwards.

13 Q. And in that instance did you determine that the
14 tasing was appropriate?

15 A. I did.

16 Q. And any other instances?

17 A. I had two officers that pepper sprayed an
18 individual.

19 Q. And what happened there in terms of your
20 investigation?

21 A. They were 100 percent justified in what they
22 did.

23 Q. And then when you have taught or supervised
24 those who taught during the scenario-based training
25 you're constantly making judgments about whether the

Page 33

1 conduct of the officers is consistent with the training
2 that has been provided to them, right?

3 **A. That they're doing it right?**

4 Q. Yeah.

5 A. Yes. The instructors are, as they're teaching
6 and showing, they're making sure they're doing it
7 right. if they're not, they're going to show them the
8 right way.

9 Q. Do you know Officer Antonio Muniz?

10 A. Just by name.

11 Q. Now, he was hired on May 4th of 2009. And when
12 he was deposed in this case not too long ago, I think
13 it was in February, he said that he had not received
14 any instruction with respect to the dangers posed or
15 possibly experienced by obese people when you restrain
16 them when they're face down on the ground and you're
17 cuffing them behind their back. Does that surprise you
18 as a person who's been involved in training, or not
19 surprise you?

20 MR. BACEVICE: Objection.

21 MS. BUNGARD: Objection.

22 A. I really don't know.

23 Q. Well, it's consistent with what you said in that
24 you didn't give any instruction or aren't aware of any
25 instruction of any particular dangers posed by obese

Page 34

1 people on the ground prone when they're cuffed behind
2 their back, right?

3 MR. BACEVICE: Objection.

4 MS. BUNGARD: Objection.

5 **A. Me personally, no, I don't recall giving any**
6 **instruction on that.**

7 Q. And what about David Borden, do you know him,
8 Detective?

9 **A. Again, just by name.**

10 Q. He said he was hired in August of '96. And he
11 said that he never received any training from Cleveland
12 Division of Police on positional asphyxia. That's
13 consistent with your experience, right?

14 MR. BACEVICE: Objection.

15 MS. BUNGARD: Objection.

16 You can answer.

17 **A. Yeah. I don't recall.**

18 Q. You don't recall what?

19 **A. Instruction on positional asphyxiation.**

20 Q. Right. What about Detective Rhonda Gray, do you
21 know her?

22 **A. Again, just by name.**

23 Q. She was hired in '98. Also said she wasn't
24 trained in positional asphyxiation. And she
25 volunteered at page 70 of her deposition that she

Page 35

1 thinks officers in Cleveland are not adequately trained
2 regarding the dangers of positional asphyxiation. Do
3 you agree with that?

4 MR. BACEVICE: Objection.

5 MS. BUNGARD: Objection.

6 A. I don't have an opinion. I haven't sat down and
7 thought about it in that sense.

8 Q. Well, as we sit here today and we're thinking
9 about it, what is your opinion as to whether officers
10 have been adequately trained on positional asphyxiation
11 in Cleveland?

12 MR. BACEVICE: Objection.

13 MS. BUNGARD: Objection.

14 A. I mean, I'd rather not sit here and form an
15 opinion.

16 Q. Are you familiar with the death of Eric Garner
17 in New York?

18 MR. BACEVICE: Objection.

19 MS. BUNGARD: Objection.

20 A. I've heard of it. I mean very minimally I've
21 heard of it.

22 Q. You followed that on the news?

23 A. I can't say I followed it. I've heard of the
24 case.

25 Q. And are you aware that on August 1, 2014 the New

Page 36

1 York City Medical Examiner determined that the cause of
2 death for Eric Garner was a homicide due to neck
3 compression and the compression of Garner's chest in
4 prone positioning during physical restraint by police.
5 Did you know that?

6 MR. BACEVICE: Objection.

7 MS. BUNGARD: Objection.

8 **A. No.**

9 Q. And Eric Garner was the person who said I can't
10 breathe while he was being restrained. You remember
11 that, right?

12 MS. BUNGARD: Objection.

13 MR. BACEVICE: Objection.

14 **A. Just, like I said, I'm familiar with the case
15 from the TV.**

16 Q. And you saw LeBron James wear an I can't breathe
17 t-shirt when he was working out shortly after the
18 medical examiner ruled that way, right?

19 MR. BACEVICE: Objection.

20 MS. BUNGARD: Objection.

21 **A. I did.**

22 Q. And you saw Kyrie Irving's that said the same
23 thing, I can't breathe?

24 MR. BACEVICE: Objection.

25 MS. BUNGARD: Objection.

1 A. I honestly don't remember him wearing it.

2 Q. Okay. Well, he did. And even President Obama
3 applauded them for noting this tragic death in such a
4 public way and the fact that he said I can't breathe,
5 right?

6 MR. BACEVICE: Objection.

7 MS. BUNGARD: Objection.

8 A. I don't know.

9 Q. So after this big basketball star in Cleveland
10 wears I can't breathe on his shirt and there's such
11 public notice of the dangers of prone positioning
12 during physical restraint by police, did the Cleveland
13 Police take a look in any way that you're aware of at
14 their policies and training regarding positional
15 asphyxiation?

16 MR. BACEVIEC: Objection.

17 MS. BUNGARD: Objection.

18 A. I don't know.

19 Q. Did you ever become aware of any review of the
20 policies and training regarding positional asphyxia
21 between the death of Eric Garner in July of 2014 and
22 the death of Tanisha Anderson on November 12th, 2014?

23 MS. BUNGARD: Objection.

24 MR. BACEVICE: objection.

25 A. I don't know.

1 Q. Now, there was a divisional notice. I'm going
2 to ask you to take a look at Exhibit 40.

3 MR. BACEVICE: I know I
4 did this the last depo, but re-note an
5 objection to Exhibit 40 and objection to
6 the questions based on Exhibit 40.

7 MR. GERHARDSTEIN: Okay.

8 MR. BACEVICE: Okay.

9 BY MR. GERHARDSTEIN:

10 Q. Do you have it?

11 A. **I do.**

12 Q. Do you see the divisional notice that's marked
13 Exhibit 40?

14 A. **I do.**

15 Q. And it's dated November 24th, 2014.

16 A. **M-hm.**

17 Q. Did you assist in any way with the development
18 of this divisional notice?

19 A. **No.**

20 Q. Do you know who wrote it?

21 A. **I do not. But the chief of police signs off
on it.**

23 Q. Right. But he doesn't write all these, does he?

24 A. **No. We have a unit for that.**

25 Q. I see in the lower left-hand corner we have some

Page 39

1 initials, and it says policy and procedures unit. Does
2 that help at all?

3 **A. No. I believe that's the chief there.**

4 Q. You're right.

5 A. **And probably a secretary, or who's in charge of**
6 **policy and procedures.**

7 Q. Is policy and procedures part of the training
8 unit?

9 A. **No.**

10 Q. Okay. Did you get a copy of this divisional
11 notice?

12 A. **I'm sorry?**

13 Q. Did you get a copy of the divisional notice?

14 A. **I don't recall. I more than likely did.**

15 Q. When you received it, did you connect the
16 divisional notice back to the death of Tanisha
17 Anderson?

18 MS. BUNGARD: Objection.

19 You can answer.

20 A. **No.**

21 Q. But you knew that she was encountering police
22 because there was a crisis intervention run, right?

23 MS. BUNGARD: Objection.

24 A. **I mean, I know from hearing that it was a crisis**
25 **intervention run and there were officers involved.**

Page 40

1 Q. Right.

2 A. I don't know much otherwise.

3 Q. And you knew that back in November 2014, right?

4 MS. BUNGARD: Objection.

5 A. I heard about it, I mean.

6 Q. So this coming out 10 days after or 12 days
7 after she died, did that trigger in your mind that
8 there was a need being addressed by the chief to remind
9 people of issues that come up during crisis
10 intervention?

11 MS. BUNGARD: Objection.

12 A. I don't recall ever having a thought like that.

13 Q. You taught crisis intervention, right?

14 A. I did.

15 Q. And the fifth bullet point down says that the
16 officers should contact a supervisor if the person is
17 uncooperative but not an immediate threat to themselves
18 or others. Is that a change in how crisis intervention
19 had been pursued prior to this time?

20 MS. BUNGARD: Objection.

21 A. I would have to look at the prior policy to see
22 if that's a change or not. I'm really not sure.

23 Q. This particular divisional notice doesn't bring
24 up the subject of positional asphyxia, does it?

25 A. No. I've scanned it. I didn't read every word,

1 **but I don't believe it brings it up.**

2 Q. And there is no general order that addresses
3 positional asphyxia, right?

4 **A. I don't believe so.**

5 Q. You also taught first aid, right?

6 **A. Years ago.**

7 Q. And you taught in the academy?

8 **A. Yes.**

9 Q. Has that changed over the years, what's taught
10 with respect to first aid?

11 **A. I'm not sure. It's been a few years and I know
12 that it's always -- American Heart re-evaluates I think
13 every year or six months.**

14 Q. When you first taught first aid was there any
15 equipment in the cruisers to assist officers who were
16 administering first aid?

17 **A. I don't believe so.**

18 Q. And has there ever been any equipment in the
19 cruisers that assist officers who are administering
20 first aid?

21 **A. That I know of, no. But I -- I haven't been
22 here since the department started, so --**

23 Q. What's your expectation as to what an officer
24 ought to be able to do in terms of first aid in terms
25 of assessing the need for medical intervention or any

Page 42

1 other measures; what's the expectation of an officer?

2 MR. BACEVICE: Objection.

3 MS. BUNGARD: Objection.

4 A. **To do what they were taught in the first aid
5 class.**

6 Q. And what is that? Just a general --

7 A. **I'd have to go through the curriculum. It's
8 been so long. Really, I would have to go through the
9 curriculum.**

10 Q. Any idea at all what you taught in the first aid
11 class?

12 A. **I mean, you teach, you know, if somebody's
13 bleeding, pressure, things like that. Splinting an
14 arm, a bee sting, heat. There's a lot of topics. It's
15 a curriculum, there's a book and that's what's taught
16 to them.**

17 Q. Is there any particular instruction regarding
18 when to call EMS?

19 MR. BACEVICE: Objection.

20 MS. BUNGARD: Objection.

21 A. **I'm really not sure.**

22 Q. Is it your expectation as a supervisor that
23 officers should know when to call EMS?

24 MR. BACEVICE: Objection.

25 MS. BUNGARD: Objection.

1 A. I really can't answer for every situation, an
2 officer that's out there. If an officer doesn't know
3 somebody's in distress --

4 Q. Is it your expectation that an officer would
5 call EMS if force has been used?

6 MR. BACEVICE: Objection.

7 MS. BUNNARD: Objection.

8 A. It would be what's in policy and what policy
9 states to do.

10 Q. Is that what's in policy?

11 A. I'd have to look at it.

12 Q. So as you sit here today you just don't remember
13 whether --

14 A. I don't believe policy -- there's no time frame
15 to -- that says you call them, if that's what you're
16 asking.

17 Q. No. I'm just trying to figure out what are the
18 triggers for calling EMS. If you use force, are you
19 supposed to call EMS?

A. I'd have to look at the policy and see.

21 Q. And is it your testimony that whenever you are
22 instructed to call EMS, there's no time frame for how
23 soon you have to call them; is that what you were
24 volunteering?

25 A. Right. Like I said, I would have to look at the

Page 44

1 policy to see what the exact verbiage was when calling
2 for medical help.

3 Q. If a person places pressure on the back of a
4 subject that is prone on the ground and cuffed behind
5 her back, is that the type of action that would trigger
6 a duty to call EMS?

7 MR. BACEVICE: Objection.

8 MS. BUNGARD: Objection.

9 A. I don't believe so.

10 Q. If a person places pressure on the back of a
11 subject who's prone on the ground and cuffed behind her
12 back, and then after three or four minutes of
13 administering pressure the person becomes unresponsive,
14 is that a reason -- does that trigger a duty to call
15 EMS?

16 MR. BACEVICE: Objection.

17 MS. BUNGARD: Objection.

18 THE WITNESS: Can I go
19 ahead?

20 MS. BUNGARD: Yeah.

21 A. If a person is unresponsive, they need medical
22 attention and you would call for EMS.

23 Q. What if they are -- what if the officer thinks
24 they're breathing but they are unresponsive; they have
25 gone from kicking and talking to not responding but

Page 45

1 possibly breathing, --

2 MR. BACEVICE: Objection.

3 MS. BUNGARD: Objection.

4 BY MR. GERHARDSTEIN:

5 Q. -- is that a reason to call EMS?

6 A. **I mean, I can't say. I'm not that officer.**

7 Q. All right. So you would as a supervisor give an
8 officer discretion not to call EMS if the subject had
9 gone from talking and kicking to not moving and
10 otherwise unresponsive but maybe breathing; --

11 MR. BACEVICE: Objection.

12 MS. BUNGARD: Objection.

13 Q. -- that's enough in your view as a supervisor
14 that the officer could choose not to call EMS?

15 MR. BACEVICE: Objection.

16 MS. BUNGARD: Objection.

17 A. **I can't give an opinion. That's an opinion. I
18 can't form an opinion.**

19 Q. All right. So you don't think that that's clear
20 enough as a supervisor that in that situation the
21 officer would have a duty to call EMS?

22 MR. BACEVICE: Objection.

23 MS. BUNGARD: Objection.

24 A. **Again, I can't form an opinion on that.**

25 Q. When an officer does call EMS, is an officer

1 | supposed to also call for a supervisor?

2 A. Again, I'd have to look at the policy, but I
3 believe you don't have to call a supervisor if you're
4 calling for EMS for an individual.

5 Q. And is an officer authorized to call EMS, or
6 does the officer have to wait for a supervisor to come
7 to the scene before calling EMS?

8 A. No. They're allowed to call EMS. They don't
9 have to have a supervisor's permission.

10 Q. Would you agree that it's foreseeable for
11 Cleveland Police Officers that they will encounter
12 consumers that are having a mental health crisis --

13 MR. BACEVIEC: Objection.

14 MS. BUNGARD: Objection.

15 BY MR. GERHARDSTEIN:

16 Q. -- through the course of their work?

17 A. Sure. Policemen can encounter someone having a
18 mental health issue.

19 Q. And how common is that; do you think?

20 MR. BACEVICE: Objection.

21 A. I don't know. I mean, you could get statistics
22 from radio dispatch. I don't know the numbers on that.

23 Q. In your experience what's the division of labor
24 between police and EMS when the call requests
25 assistance getting a person having a mental health

Page 47

1 crisis to the hospital or for medical care?

2 MS. BUNGARD: Objection.

3 MR. BACEVICE: Objection.

4 BY MR. GERHARDSTEIN:

5 Q. No crime. Just need some help getting this sick
6 person to the hospital.

7 A. **What do you mean division of labor? I'm not
sure what you're asking.**

8 Q. Like who handles that kind of call; is it EMS,
9 or police?

10 11 MS. BUNGARD: Objection.

12 A. **I don't know. Every situation is different.**

13 Q. Tell me about that.

14 A. **EMS could receive it.**

15 Q. What are the situations in which --

16 A. **Because EMS might receive a call that we never
received. And we might receive a call that we don't
call EMS. So it's situational again.**

17 Q. Have you ever had instances where EMS --

18 Have you ever had instances where you were
19 responding to a crisis intervention call and you
20 thought it would be more helpful to have EMS there
21 rather than a uniformed police presence?

22 23 MS. BUNGARD: Objection.

24 A. **Myself?**

1 Q. Yeah.

2 A. As a supervisor or as a patrolman?

3 Q. Either way.

4 A. Sure, I've been at crisis intervention
5 situations where we've called EMS.

6 Q. And has there been any problem --

7 Has there been any problem with EMS responding
8 in a situation where you have sought their assistance?

9 MS. BUNGARD: Objection.

10 MR. BACEVICE: Objection.

11 A. Not that I recall.

12 Q. Have you ever been aware of any contention by
13 EMS personnel that mental health emergencies
14 unaccompanied by a physical medical emergency are not
15 on their turf?

16 MR. BACEVICE: Objection.

17 MS. BUNGARD: Objection.

18 A. I don't know.

19 Q. You haven't seen that?

20 A. Not that I know of.

21 Q. In a crisis intervention encounter if an officer
22 has secured the agreement of the subject to let the
23 officer accompany the subject to the hospital, and then
24 the subject changes her mind and doesn't want to go, is
25 it appropriate for the officer to use force to take the

Page 49

1 subject to the hospital?

2 MR. BACEVICE: Objection.

3 MS. BUNGARD: Objection.

4 A. Again, it's situational. I mean, I can't
5 explain --

6 Q. Tell me the type of situation where force would
7 be used and the type of situation where you'd advise
8 the officer to just back off.

9 MR. BACEVICE: Objection.

10 MS. BUNGARD: Objection.

11 A. I can't answer. That's a judgment call at that
12 scene.

13 Q. So describe the types of scenes. What are the
14 factors you'd want the officer to consider before using
15 force on a non-criminal, unarmed person who you are
16 encountering only because the family would like help
17 getting the person to the hospital?

18 MR. BACEVICE: Objection.

19 MS. BUNGARD: Objection.

20 A. Again, I can't form an opinion. I feel like
21 you're asking for an opinion that I can't give.

22 Q. No. I'm asking you to --

23 A. If I was at a call, I would -- if I was there I
24 would make a determination. So I can't explain why
25 somebody else would do what they may have done in a

1 situation.

2 Q. So you've been on calls like that, right?

3 A. Like what?

4 Q. Helping people go to the hospital.

5 A. Yes. I've been at calls where somebody had to
6 go to the hospital.

7 Q. And in those situations have you transported the
8 person in the zone car?

9 | A. I have.

10 Q. And when you've done that, have you ever
11 encountered a situation where the subject started to
12 get in the zone car and then changed his or her mind?

13 A. I can't recall a specific incident. I mean, I
14 know I never had every time somebody 100 percent
15 wanting to go, but I don't recall an incident
16 specifically, if that's what you're asking.

17 Q. If those were the only facts you had, that an
18 otherwise compliance subject sat down in the zone car
19 and then changed her mind and got up and said, I don't
20 want to go, is that reason enough to use force on that
21 subject?

22 MR. BACEVICE: Objection.

23 MS. BUNNARD: objection.

24 A. In a specific situation, possibly. I don't
25 know. I'd have to be in that situation to tell you

Page 51

1 **that are there times, sure, if the person has a probate**
2 **warrant to go, then that's an automatic in custody. So**
3 **again, I can't think of a specific situation that I**
4 **found myself in.**

5 Q. Yeah. Well, listen to the question. The
6 question was if that's all you know, there's no probate
7 warrant, and I'm not going to make up other facts.
8 Okay?

9 All you know is that a person who is otherwise
10 compliant sat down in the zone car, and then changed
11 her mind and said, no, I don't want to go, is that
12 reason enough to use force on that person to require
13 her to go with the officer to the hospital?

14 MR. BACEVICE: Objection.

15 MS. BUNGARD: Objection.

16 You can answer.

17 A. **In my opinion if I've determined as the officer**
18 **that she needs to go to the hospital and she does**
19 **become uncooperative, yes, you could end up having to**
20 **go hands on with somebody.**

21 Q. And is that what you taught officers when you're
22 teaching crisis intervention?

23 MR. BACEVICE: Objection.

24 MS. BUNGARD: Objection.

25 A. **I don't recall talking about a specific incident**

1 and if you, you know, encountered a resistant person.
2 But I mean, I know it comes up in crisis intervention
3 training. We're allowed to determine that that
4 person's going to the hospital, and then we use
5 whatever tactics are necessary in order to take them
6 into our custody.

7 Q. If a person sits in the zone car, and then
8 changes her mind and decides that she doesn't want to
9 go with the officer to the hospital, is it appropriate
10 to attempt verbal persuasion of that person, or is it
11 -- does the officer have discretion to use force
12 immediately?

13 MR. BACEVICE: Objection.

14 MS. BUNGARD: Objection.

15 A. Again, that's a situation you find yourself in.
16 So I can't form an opinion on the officer as you're
17 speaking of.

18 Q. Well, did it --

19 A. We are allowed to go hands on with individuals
20 when there's no criminal activity but we're still
21 taking the person in our custody. Yes, we're allowed
22 to go hands on with them.

23 Q. And is the decision to go hands on, can
24 expediency be a reason --

25 MR. BACEVICE: Objection.

Page 53

1 MS. BUNGARD: Objection.

2 BY MR. GERHARDSTEIN:

3 Q. -- to go hands on?

4 A. **Possibly if there's a threat there.**

5 Q. What's the --

6 A. **There's so many factors --**

7 Q. Yeah.

8 A. **-- in a situation. Every situation is
9 different.**

10 Q. I'm not adding threats to it. The only thing
11 I'm trying to talk about is a person who says they
12 don't want to go to the hospital. There's no threat.
13 There's no weapon. There's no crime. The only thing
14 is they don't want to go to the hospital.

15 MR. BACEVICE: Objection.

16 A. **There could be a threat at any time. So that's
17 -- I don't know what you're asking me.**

18 Q. So if the officer thinks there could be a threat
19 developing or if the officer is afraid there might
20 become a threat, he can use force?

21 MR. BACEVICE: Objection.

22 MS. BUNGARD: Objection.

23 Q. He doesn't really have to have a threat?

24 A. **No. There could or couldn't be. It's a
25 determination while you're there in that incident.**

1 **Every situation is different, so I don't know.**

2 Q. So after Tanisha Anderson was taken to the
3 hospital, the officers involved in the encounter did a
4 walk-through and explained what happened to officers
5 who were investigating the use of force, I assume in a
6 manner similar to the officers you investigated that
7 used the taser or did the pepper spray. Okay.

8 **A. I wouldn't know if they did or didn't.**

9 Q. Okay. So the one detective who attended the
10 walk-through was Detective Borden, and I want to tell
11 you what he said happened.

12 So he's doing a walk-through with the officer
13 who was engaged with Tanisha Anderson. And this is how
14 he reported it. She had sat in the car. She wouldn't
15 put her legs in the car. She tried to convince -- they
16 tried to convince her to get all the way in the car.
17 At one point she got back up out of the car, and then
18 she started to resist their efforts to take her to the
19 hospital. They get into a wrestling match I guess
20 would be the best way to put it. And they wound up on
21 the ground. And then she wound up on her face, and
22 they wound up handcuffing her because she was kicking
23 and swinging at the officers and they were afraid that
24 she was going to hit them or hurt herself.

25 So what do you mean by wrestling match? They

1 were trying to gain control of her and she didn't want
2 to comply with what they wanted her to do. She was
3 fighting them, pulling her arms away, swinging at them,
4 kicking at them. All right. So that's what one
5 detective heard in this walk-through.

6 And then another one who was at the walk-through
7 summarized what happened, which is at Exhibit 17, the
8 victim still would not comply and enter the police
9 vehicle. She then collapsed to the ground, laid on her
10 back and began kicking at the officers. She then
11 rolled onto her stomach. PO Aldridge states he placed
12 his right knee onto the victim's right shoulder blade
13 to control her and keep her down. He described
14 displacing his weight by keeping his left leg to the
15 side and off the victim.

16 PO Myers described controlling the victim by
17 holding the victim's left arm down and grabbing the
18 victim's left leg and holding it up to prevent the
19 victim from back-kicking them. After three to four
20 minutes the victim ceased her actions and appeared to
21 fall asleep.

22 So just given what I've relayed to you from
23 these officers and these detectives, what they heard
24 during the walk-through as described by these officers,
25 was the application of force to the back of the cuffed

1 and prone Tanisha Anderson for three to four minutes
2 consistent with the training?

3 MR. BACEVICE: Objection.

4 MS. BUNGARD: Objection.

5 A. There isn't a time frame. We don't ever put a
6 time frame on anything, so I can't say three or four
7 minutes was consistent or not. You're not given a
8 certain amount of time that things occur in.

9 Q. Okay. So your answer is it is consistent?

10 A. What is consistent?

11 MS. BUNGARD: Objection.

12 BY MR. GERHARDSTEIN

13 Q. So is the force that was applied, as you heard
14 it described in what I read to you, consistent with how
15 you trained officers when you supervised trainers of
16 officers who are engaged with people on mental health
17 crisis runs?

18 MR. BACEVICE: Objection.

19 MS. BUNGARD: Objection

20 THE WITNESS: Can I
21 answer?

22 MR. BACEVICE: Sure.

23 A. If officers have a person that's kicking,
24 flailing, afraid they're going to get hit, yes, they
25 are allowed to take the person to the ground in the

1 prone position, handcuff them, restrain them, whatever
2 the case may be, because there is a threat there at
3 that point.

4 So from what you described did officers do
5 things they were allowed to do? Yes. Time frame, I
6 can't comment on because nothing's -- we don't put
7 things in time.

8 Q. Right. Well, if I understand this, and correct
9 me if I'm wrong, it sounds like what you're saying is
10 they aren't taught that any particular time frame must
11 be honored; so therefore, you can't say that putting
12 the pressure on for three to four minutes is a
13 violation of something they were taught; is that fair?

14 MR. BACEVICH: Objection.

15 MS. BUNGARD: Objection.

16 A. It's fair to say there's nothing in writing that
17 I know of that says there's a time frame, which means
18 there wouldn't be anything to violate.

19 Q. Okay. Now, another thing that happened and that
20 was learned about was the fact that the victim -- when
21 I ended the narrative I said she appeared to fall
22 asleep. And by looking at both what was said at the
23 walk-through and by reviewing the radio records, the
24 summary that went into this report says a review of the
25 CCS CAD notes revealed a supervisor was requested at

1 23:20 hours and EMS was requested at 23:34 hours,
2 indicating the victim was in a prone position for a
3 minimum of 14 minutes.

4 And they also said that both officers report the
5 victim was on her stomach, handcuffed behind her back
6 until the sergeant arrived on scene. Upon her arrival,
7 she moved the victim onto her back and requested EMS.

8 So it looks like from their research on this
9 that officers let Tanisha Anderson lay on her stomach,
10 cuffed behind her back, unresponsive or they said
11 appeared to be sleeping for 14 minutes. And then
12 during that time they called a supervisor. The
13 supervisor then rolled her over and called EMS.

14 Is that consistent, that type of conduct
15 consistent with the training that officers have
16 received about subject control and first aid?

17 MR. BACEVICE: Objection.

18 MS. BUNNARD: Objection.

19 A. I don't know. I mean, you're talking a timing
20 thing again.

21 Q. Okay. Can you help me understand a situation
22 where leaving somebody who is unresponsive for 14
23 minutes on their stomach with their hands cuffed behind
24 their back would be reasonable?

25 MR. BACEVICE: Objection.

Page 59

1 MS. BUNGARD: Objection.

2 A. I wasn't there; I can't comment on that
3 situation.

4 Q. So as you hear it you also can't say that it
5 violates training?

6 A. I can't say it violates training, no.

7 MR. BACEVICE: Objection.

8 MS. BUNGARD: Can we
9 take a few minutes?

10 MR. GERHARDSTEIN: Sure.

11 (Thereupon, there was a recess.)

12 MR. GERHARDSTEIN: All right.

13 So I have no more questions.

14 MS. BUNGARD: You have
15 the right to read the transcript before we
16 can, to check for any typographical
17 errors. She does a very good job, so
18 there probably won't be any. But you
19 absolutely have that right.

20 They will send me a letter telling me
21 that you would be notified to go to her
22 office to read it. You have 30 days from
23 the date the letter is received, or you
24 can waive that right. You will get to see
25 the transcript anyways if you choose to.

Page 60

1 THE WITNESS: You don't
2 have any concern?
3 MS. BUNGARD: No. I
4 don't have any concerns. So you need to
5 let her --
6 THE WITNESS: Then I'm
7 okay with that.
8 MS. BUNGARD: So you say
9 I waive.
10 THE WITNESS: I waive.
11 - - -
12 (DEPOSITION CONCLUDED.)
13 (SIGNATURE WAIVED.)
14 - - -
15
16
17
18
19
20
21
22
23
24
25

Page 61

1

CERTIFICATE

2

State of Ohio,) SS:

3

County of Cuyahoga.)

4

I, Kristine M. Esber, a Notary Public within and
for the State of Ohio, duly commissioned and qualified,
do hereby certify that the within-named witness, SGT.
JENNIFER KEMER, was by me first duly sworn to tell the
truth, the whole truth and nothing but the truth in the
cause aforesaid; that the testimony then given by her
was reduced to stenotypy, and afterwards transcribed by
me through the process of computer-aided transcription,
and that the foregoing is a true and correct transcript
of the testimony so given by her as aforesaid.

5

6

I do further certify that this deposition was
taken at the time and place in the foregoing caption
specified.

7

8

I am not, nor is the court reporting firm with
which I am affiliated, under a contract as defined in
Civil Rule 28(D).

9

10

I do further certify that I am not a relative,
employee or attorney of either party, or otherwise
interested in the event of this action.

11

12

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal of office at Cleveland, Ohio, on
this 11th day of May 2016.

13

14

Kristine M. Esber, Notary Public
in and for the State of Ohio.
My Commission expires November 29, 2020.

15

16

17

18

19

20

21

22

23

24

25